

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

CHARLES WATKINSON

SERIAL NO.: 10/598,398

ART UNIT: 1791

FILED: DECEMBER 22, 2006

EXAMINER: JODI F. COHEN

TITLE: FORMATION OF GLASS FLAKES CONFIRMATION NO.: 3733

APPELLANT'S REPLY APPEAL BRIEF

Applicant, Charles Watkinson, Appellant herein, respectfully files his *Reply Appeal Brief*, pursuant to 37 C.F.R. §41.41, on his pending appeal before the Board of Patent Appeals & Interferences in response to the *Examiner's Answer*, dated May 11, 2010:

Claims 5-9 Are Not Obvious over Watkinson et al., U.S. Patent No. 5,017,207

Independent Claim 5 (and all remaining claims via dependency) recites a method for particle size distribution of flakes of material, such as glass flakes, which comprises the step of:

“varying a distance between the cup, or the disc, and an entrance to the gap between the pair of plates until a desired particle thickness size distribution of said flakes of material is obtained.”

As the Examiner correctly points out in the *Examiner's Answer* (at 8), the applied prior art of Watkinson *et al.*, U.S. Patent No. 5,017,207, “discloses varying the diameter of the plates to specifically adjust the thickness of the flake produced.” The Examiner,

immediately thereafter, concludes that “[v]arying the diameter of the plate[s] would adjust the distance over which the molten material flows after it has flowed out of the cup at a given velocity.” The Examiner then proceeds (at 8) to equate the parameter of varying the diameter of the plates as an obvious “modification of the distance over which the molten material travels after it has flowed out of the cup that causes a change to the thickness of the flakes produced or the amount of air exposure the material encounters.”

The Examiner would therefore appear to be concluding that varying the diameter of the plates is no different than varying the distance between the cup and the inner edge of the plates and that varying one such parameter would suffice, or be equivalent, to varying the remaining parameter; yet there is nothing in the prior art that even remotely suggests any such equivalence. Nevertheless, if the Examiner’s apparent conclusion has been correctly summarized by Appellant, then “varying a distance between the cup, or the disc, and an entrance to the gap between the pair of plates” would render the parameter of varying the diameter of the plates an irrelevancy – the diameters of the plates would be without consequence. Yet, as the Examiner admits, and correctly so, the applied citation of *Watkinson et al.* ‘207 teaches that varying the diameter of the plates is relevant to the thickness of the flake so produced, rendering the Examiner’s argument internally contradictory.

In summation, Appellant respectfully submits that, to accept the Examiner’s argument that independent Claim 5 is obvious over *Watkinson et al.* ‘207, one must ignore an explicit teaching of *Watkinson et al.* ‘207 that has been advanced by the Examiner, namely, that *Watkinson et al.* ‘207 discloses the importance of varying the diameter of

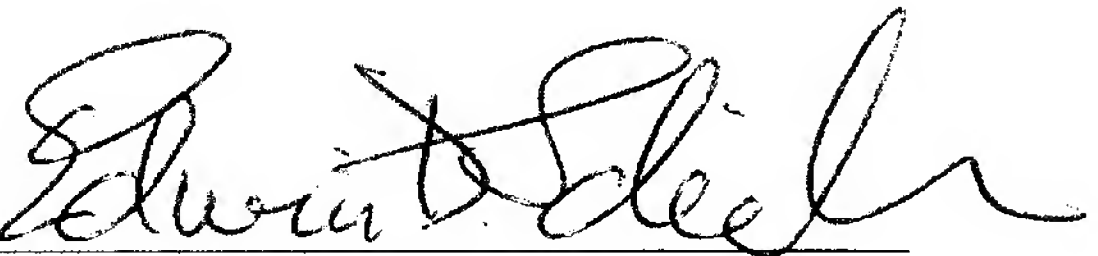
the plates to adjust the thickness of the flake produced, which the Examiner now states is, as a practical matter, irrelevant.

Conclusion

It is, therefore, respectfully contended that Appellant's invention, as most broadly recited in independent Claim 5, cannot reasonably be viewed as being obvious over Watkinson *et al.*, U.S. Patent No. 5,017,207, and it is therefore requested that the Examiner's 35 U.S.C. §103(a) obviousness rejection of the final Office Action should be appropriately reversed.

Respectfully submitted,

CHARLES WATKINSON

By 
Edwin D. Schindler
Attorney for Applicant
Reg. No. 31,459

PTO Customer No. 60333

Five Hirsch Avenue
P. O. Box 966
Coram, New York 11727-0966

(631)474-5373

July 12, 2010

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Appellant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.